



## 39 CFR Part 111

### Periodicals Pending Authorization Postage

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is amending *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) subsection 207.5.2 to revise the process for calculating postage on a Periodicals publication pending authorization.

**DATES:** *Effective Date:* January 9, 2022.

**FOR FURTHER INFORMATION CONTACT:** Elke Reuning-Elliott at (202) 268-4063 or Garry Rodriguez at (202) 268-7281.

**SUPPLEMENTARY INFORMATION:** On September 30, 2021, the Postal Service published a notice of proposed rulemaking (NPRM) (86 FR 54142) to revise the postage calculation standards for Periodicals pending authorization. In response to the proposed rule, four commenters submitted comments.

*Comment:* One commenter supported the proposal changes, stating that it would make pricing Pending periodicals more efficient and effective.

*USPS Response:* The Postal Service is grateful for the support.

*Comment:* One commenter opposed the proposal, characterizing it as a price increase unsupported by data, analysis, or fiscal studies that would assess its effects.

*USPS Response:* The Postal Service believes this comment misunderstands the proposal. The Postal Service was not proposing a price increase, which in any event would have to be brought as a price case before the Postal Regulatory Commission, not a change to the Domestic Mail Manual. Rather, the Postal

Service proposed an alternative method of assigning non-Periodicals prices to mailings while a mailer's application for Periodicals mailing privileges is pending.

Mailers seeking Periodicals mailing privileges must submit an application for approval, together with appropriate fees and supporting information to demonstrate eligibility (DMM 207.4.1 – 207.4.2; 207.4.13; 207.5.1.1 – 207.5.1.10; 207.10.7.1 – 207.10.7.3). While this application is pending, a mailer may prepare its mailing as Periodicals and make use of all available dropshipping and pre-sorting options available for Periodicals, but the mailing is not eligible for Periodicals prices.

As such, the mailer must provide two postage statements with each mailing, a Periodicals postage statement and a postage statement for the non-Periodicals price most closely applicable to the mailing (DMM 207.17.2.5). The process is automated, however, and a mailer that has an account with the Postal Service need only enter a Periodicals postage statement into the Postal Service computer systems, which then automatically generate the non-Periodicals postage statement and calculate the closest applicable non-Periodicals prices. It is the methodology its computer systems use to assign non-Periodicals prices that the Postal Service proposed to revise because the current methodology is unwieldy and limited.

On the one hand, maintaining the underlying mapping between Periodicals and non-Periodicals prices is labor intensive. There are hundreds of possible rate cells to map between Periodicals prices and possible non-Periodicals prices. The price for out-of-county Periodicals, for example, includes a per-pound price for the percentage of advertising space; a per-pound price for the percentage of non-advertising space; a per-piece price that varies by shape (*i.e.* letters, flats, or parcels), sorting level (*e.g.*, CR, 5-Digit, 3-Digit, ADC, etc.),

and machinability; and a per-bundle or per container price, the latter of which varies by dropship level (Notice 123, August 29, 2021).

On the other hand, and more importantly, the current methodology does not provide exact pricing. In some cases, for example, a mailing might receive a non-Periodical rate that most closely matches by size, weight, and shape but for which the mailing nevertheless does not qualify because it does not meet volume requirements. The minimum volume requirement for a mailing pre-sorted to ADC, 3-Digit, or 5-Digit, for example, is 6 pieces for Periodicals and 10 pieces for Marketing Mail, the most closely analogous price. Pending Periodicals mailings between 6 and 9 pieces receive the Marketing Mail price even though those mailings do not qualify for that price.

In other cases, an equivalent appropriate rate simply may not exist. For example, an out-of-county Periodical mailing will pay one price, an identical in-county Periodical mailing will pay a different and lower price, *id.*, but no other mail product makes an equivalent in-county / outside-county pricing distinction. Thus, the most closely applicable price to charge pending in-county Periodicals as opposed to pending outside-county Periodicals is unclear.

Accordingly, in the September 30 NPRM, the Postal Service proposed a simplified way to charge current non-Periodical rates for Periodicals mailings while a mailer's application for Periodicals privileges is pending. Mailers pay non-Periodical rates based upon commonalities of size, shape, and weight between the Periodicals mailed and other products. Table 1, an expanded version of DMM Exhibit 5.2.3, sets out possible Periodical types, corresponding non-Periodicals products, the reason for the association, the relevant average per-piece prices, and the non-Periodicals price to be paid, expressed as a percentage to be added to the Periodicals prices.

Table 1: Pending Periodicals and Associated Rates

PERIODICAL	ASSOCIATED CLASS/SUBCLASS	REASON FOR ASSOCIATED CLASS/SUBCLASS	AVG PRICE FOR ASSOCIATED CLASS/SUBCLASS	AVG PERIODICALS PRICE <sup>1</sup>	% DIFFERENCE
Periodicals Flats	Marketing Mail Flats <sup>2</sup>	Meets Flat Dimension Requirement up to 15.99 ozs.	\$0.542	\$0.333	63%
Periodicals Letters	Marketing Mail Letters <sup>2</sup>	Meets Letter Dimension Requirement up to 15.99 ozs.	\$0.258	\$0.295	0%
Periodicals NP Flats	Marketing Mail NP Flats <sup>2</sup>	Eligible for both Periodicals Nonprofit & Marketing Nonprofit & Meets Flat Dimension Requirement up to 15.99 ozs.	\$0.328	\$0.234	40%
Periodicals NP Letters	Marketing Mail NP Letters <sup>2</sup>	Eligible for both Periodicals Nonprofit & Marketing Nonprofit & Meets Letter Dimension Requirement up to 15.99 ozs.	\$0.131	\$0.292	0%
Periodicals NP Parcels	Marketing Mail NP Parcels <sup>2</sup>	Minimum of 200 pcs or 50 lbs. Parcels under 1 pound	\$1.724	\$0.730	136%
Periodicals Parcels	Bound Printed Matter Parcels <sup>3</sup>	Bound Publication with weight 1 lb & over 3/4 inch thick	\$1.190	\$1.210	0%
Periodicals Flats	Bound Printed Matter Flats <sup>3</sup>	Bound Publication with weight 1 lb & Meets Flat Dimension Requirement	\$0.820	\$0.333	146%
Periodicals Letters	First Class Letters - Single Piece <sup>4</sup>	Mailing less than 200 pieces Meets Letter Dimension Requirement	\$0.575	\$0.295	95%
Periodicals Flats	First Class Flats -Single Piece <sup>4</sup>	Mailing less than 200 pieces & Meets Flat Dimension Requirement	\$1.754	\$0.333	427%
Periodicals Parcels	First Class Parcels - Retail <sup>4</sup>	Mailing less than 200 pieces & Meets Flat Dimension Requirement	\$4.970	\$1.210	311%
Periodicals Parcels	Parcel Select <sup>5</sup>	Unbound Publication and exceeds 3/4" thick or weighs over 15.99 ozs.	\$8.290	\$1.210	585%
Periodicals Parcels	Priority Mail Commercial Parcels <sup>6</sup>	Commercial Parcels weighs under 1 pound	\$7.810	\$1.210	545%
Periodicals Parcels	Priority Mail Commercial Parcels <sup>6</sup>	Commercial Parcels weighs over 1 pound but under 2 pounds	\$8.580	\$1.210	609%

Periodicals Flats	Priority Mail Commercial Flats <sup>6</sup>	Commercial Flats weighs under 1 pound	\$7.650	\$0.333	2197%
Periodicals Flats	Priority Mail Commercial Flats <sup>6</sup>	Commercial Parcels weighs over 1 pound but under 2 pounds	\$7.780	\$0.333	2236%

1 Average revenue per piece from Shape Indica for FYQ3-FY21Q2: with August approved Prices

2 Average Price based on Q3FY2020 - Q2FY2021

3 Average piece with weight at least 1 pound and up to 15 pounds based on Q3FY2020 - Q2FY2021

4 Average Price based on Q3FY2020 - Q2FY2021

5 Average Price based on Q3FY2020 - Q2FY2021 Ground and Destination Entry excluding light weight parcels

6 Average Price based on Q3FY2020 - Q2FY2021

For example, for Periodicals under one pound that meet the size requirements for Flats, mailers pay Marketing Mail Flats prices, achieved by multiplying the applicable Periodicals Flats price by 1.63, (*i.e.* adding an additional 63 percent of the Periodicals price to the average per-piece Periodicals price to reach the average, per-piece Periodicals Flats price) and not, as some commenters understood it, by paying only 63 percent of the Periodicals price. For Periodicals weighing more than one pound or that are more than 0.75" thick, mailers pay Bound Printed Matter Parcels prices, achieved by multiplying the Periodicals Parcels price by 2.46. All of this is detailed on the Periodicals postage statement, PS Form 3541.

The non-Periodicals prices to be paid are expressed as the percentage difference between the current, average per-piece price for Periodicals and the current, average per-piece price for the corresponding product. The average prices are derived from volume and revenue data for the previous four quarters, and thus the Postal Service may update the percentages in Exhibit 5.2.3 each quarter to reflect quarterly changes in volumes and revenues.

For all of the foregoing reasons, the Postal Service disagrees with the commenter's contention that the September 30 proposal for calculating pending Periodicals prices is a price increase and is making no changes as a result of the

comment. The Postal Service is, however, revising the pending postage table from the proposed rule (Exhibit 5.2.3) by adding “Nonprofit USPS Marketing Mail Parcels” as an option for eligible Periodicals during the pending authorization process. This option was inadvertently omitted from the proposal.

*Comment:* The two remaining commenters oppose the proposal on a number of grounds, though they stated that they generally support the intent to simplify and improve the current process for calculating rates for pending Periodicals.

Primarily, these commenters state that the proposed rule appears to be a price change that must first be approved by the Commission. If the Postal Service’s intent was to apply existing prices, that was not clear from, or supported by, information or discussion in the proposed rule.

The commenters also state that the proposal would result in widely divergent, often too-high, prices and, therefore, that the Postal Service should either reduce the percentages given or provide an intermediate appeals process for the mailer to seek review of the pending Periodicals price charged.

*USPS Response:* The Postal Service appreciates the commenters’ support for improving the process for assessing prices for pending Periodicals.

As explained in its response to the previous comment, the Postal Service disagrees that the proposal for changing the methodology for calculating prices for pending Periodicals also proposed a change in prices. Again, the Postal Service proposed an alternative method of assigning prices to mailings while a mailer’s application for Periodicals mailing privileges is pending. The new methodology assigns closely applicable non-Periodicals prices to pending Periodicals, and these prices are expressed as a percentage difference between the current, average per-piece price for Periodicals and the corresponding current, average per-piece price for the corresponding product, based upon

volume and revenue for the previous four quarters. The overall result is to assess, averaged across all mailings, the same amount before and after the proposal is adopted.

Looked at somewhat differently, just as the proposal makes no direct changes in prices, it makes no indirect changes in prices either. Nothing about the proposal will force pending Periodical mailings into a higher price category because existing, associated prices are already applied, nor has the Postal Service eliminated any rate cells or categories. *United States Postal Service v. Postal Regulatory Commission*, 785 F.3d 740, 751-52 (D.C. Cir. 2015); *United States Postal Service v. Postal Regulatory Commission*, 886 F.3d 1261, 1273 (D.C. Cir. 2018) (indirect changes in prices). In short, with no changes in prices or in available rate categories or cells, the proposal can have no price cap implications. Moreover, there is no technical way to map the changes described here on to the billing determinants – a prerequisite for any price cap analysis – because billing determinants data do not separately set out non-Periodicals rates paid by pending Periodicals volume.

The Postal Service apologizes that the proposal was not sufficiently clear and trusts that this explanation shows that it is not seeking to change prices for pending Periodicals.

As to wide fluctuation or variability in prices under the new methodology, the Postal Service does not agree that the proposed methodology results in higher prices. Because the proposed methodology is based upon historical volumes and current, average prices, it is possible that for any given mailing, a mailer may pay a different price than it would have paid under the existing methodology. But those prices may be higher than, lower than, or unchanged

from the existing methodology, though the Postal Service expects the prices to be close to those given by the present methodology.

Over multiple mailings during the pendency of an application for Periodicals privileges, however, mailers should collectively be paying approximately the same prices under both the previous and proposed methodologies. As such, the Postal Service disagrees that it should reduce the proposed percentage multipliers in DMM Exhibit 5.2.3.

For that same reason, the Postal Service disagrees that it should provide an additional opportunity for review of pending Periodicals pricing. What is more, the opportunity for this review already exists. When the Postal Service grants a mailer's application for Periodicals mailing privileges, the Postal Service refunds to the mailer the difference between the Periodicals prices for the mailings made while the application was pending and the higher, non-Periodicals prices the mailer actually paid for those mailings (DMM 207.5.2.2b, 207.5.3.5). Any mailer whose application for Periodicals privileges is denied and who therefore does not receive this refund may appeal the denial (DMM 207.5.3.7). This appeal was available to the approximately 25 percent of 289 applications for Periodicals privileges denied by the Postal Service in FY 2020 and 2021.

The Postal Service is revising the process to calculate pending postage by assigning the existing applicable class of mail prices based upon common characteristics of shape and weight. Each applicable class of mail price will be expressed as a percentage from the corresponding Periodicals price. This new process will simplify the calculation process during the authorization review period, and the refund process when a Periodicals publication is approved.

We believe this revision will provide customers with a more efficient and easier process.



## List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Accordingly, 39 CFR part 111 is amended as follows:

### **PART 111 – [AMENDED]**

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301-307; 18 U.S.C. 1692-1737; 39 U.S.C. 101, 401-404, 414, 416, 3001-3018, 3201-3220, 3401-3406, 3621, 3622, 3626, 3629, 3631-3633, 3641, 3681-3685, and 5001.

2. Revise the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

#### ***Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM)**

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#### **200 Commercial Mail Letters, Flats, and Parcels**

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#### **207 Periodicals**

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#### **5.0 Applying for Periodicals Authorization**

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#### **5.2 Mailing While Application Pending**

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*[Renumber 5.2.3 and 5.2.4 as 5.2.4 and 5.2.5, add new 5.2.3 to read as follows:]*

### **5.2.3 Pending Postage**

Postage for a Periodicals publication pending authorization is calculated by applying the applicable percent in Exhibit 5.2.3 to PS Form 3541, Part P, Line P-1.

#### **Exhibit 5.2.3 Pending Postage**

<b>PENDING CLASS OF MAIL</b>	<b>PCT.</b>
USPS Marketing Mail Letters	00%*
USPS Marketing Mail Flats	63%
Nonprofit USPS Marketing Mail Letters	00%*
Nonprofit USPS Marketing Mail Flats	40%
Nonprofit USPS Marketing Mail Parcels	136%
Bound Printed Matter Flats	146%
Bound Printed Matter Parcels	00%*
Parcel Select Parcels	585%
First-Class Mail Letters	95%
First-Class Mail Flats	427%
First-Class Package Service-R	311%
Priority Mail	545%

\* Use Periodicals prices.

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**Ruth B. Stevenson,**

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